

**January 9, 2024 Draft Staff Report for the
PROPOSED AMENDMENT TO THE
SANTA MONICA BAY RESTORATION COMMISSION
MEMORANDUM OF UNDERSTANDING**

**SANTA MONICA BAY
RESTORATION COMMISSION**

1. Background

The Santa Monica Bay National Estuary Program (NEP) is designated by the US Environmental Protection Agency (US EPA) to monitor, assess, coordinate, and advise the activities of state programs and oversee funding that affects the beneficial uses, restoration and enhancement of Santa Monica Bay and its watersheds. The Santa Monica Bay Restoration Commission (Commission) serves as the Management Conference for the Santa Monica Bay NEP (see Section 320 of the Clean Water Act (CWA) (33 U.S.C., § 1330)), and all of the Commission's activities are in furtherance of the Santa Monica Bay NEP.

The Santa Monica Bay NEP is comprised of two distinct entities, the Commission and Host Entity. The Commission is comprised of a Governing Board, Executive Committee, Technical Advisory Committee (TAC), the Santa Monica Bay Community Members, and Commission staff. The Commission has a long-term partnership with the Host Entity, The Bay Foundation, which has been receiving and administering the annual federal CWA Section 320 NEP grant (NEP Grant) funds and utilizing the NEP Grant as well as other sources of funding to carry out implementation of the Comprehensive Conservation and Management Plan (CCMP) since 2006. The CCMP is a long-term framework for actions and strategies that address a range of environmental problems facing Santa Monica Bay and the surrounding community. The Commission's membership may include federal, state, and local public agency officials, Tribes,¹ and employees, and representatives of other community interests.

The Commission's Memorandum of Understanding (MOU) was adopted and signed in 2003 to delineate the authority, governance, and membership of the Commission; ensure the coordination of state programs affecting Santa Monica Bay as required by the establishing legislation, Senate Bill 1381 (SB 1381 (Kuehl, 2001-2002 Reg. Sess.); see specifically Pub. Resources Code, § 30988.2, subd. (b)); and ensure the success of the Santa Monica Bay NEP. Since the adoption of the original MOU, the Commission has amended the MOU in 2005, 2007, 2009, 2011, 2012, 2013, 2014, and 2020² by majority vote of the Governing Board. The 2020 MOU was developed consistent with US EPA NEP guidance³, which requires an assessment of the NEP's governance structure

¹ "Tribal" and "Tribe" refer to California Native American Tribes as defined in Water Code section 189.7, subdivision (d)(4): a community within a federally recognized California Native American Tribe or nonfederally recognized Native American Tribe on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.

² [Santa Monica Bay Restoration Commission's Memorandum of Understanding as Amended June 18, 2020 by Governing Board Resolution 20-02.](#)

³ US EPA's [Community-Based Watershed Management Handbook](#) and [Frequently Asked Questions on National Estuary Program \(NEP\) Governance 2-19-15.](#)

approximately every 10 years. The 2020 MOU was signed by the Chair of the Commission, the Secretary of the California Environmental Protection Agency, and the Secretary of the California Natural Resources Agency.

NEPs are dynamic and it is important that the governance structure of the Management Conference overseeing the NEP adapts and reflects changes over time to the NEP. To ensure the structure and governance may be improved as needed, Section X.4 of the 2020 MOU expressly authorizes the Governing Board of the Commission to amend the MOU by a majority vote. This Amendment is needed to account for membership changes resulting from 2021 redistricting in California and Los Angeles County; to ensure NEP work is conducted equitably and justly; to clarify roles and functions of Commission entities; and to make other minor edits. Given the limited nature of the proposed revisions to the 2020 MOU, and consistent with Section X of the MOU, staff has not consulted with the Secretary of the California Environmental Protection Agency or Secretary of the California Natural Resources Agency regarding the Amendment.

2. Purpose of this Staff Report

The purpose of this Staff Report is to provide the rationale for this Amendment and explain how the changes support the Commission's ability to oversee and promote CCMP implementation and ensure the success of the Santa Monica Bay NEP.

3. Goals of this Amendment

The goals of the Amendment are to update and clarify the composition, roles, functions, mission, policy, and practices of the Commission consistent with establishing legislation, the CCMP, and US EPA NEP guidance in order to:

- Update membership according to recent redistricting;
- Ensure Commission and Host Entity functions are carried out in an equitable and just manner;
- Improve the ability for the Commission to implement the CCMP; and
- Streamline processes and improve program efficacy.

4. Summary of the Amendment

The proposed changes to the 2020 MOU (Amendment) are introduced below with a brief summary of the change and discussion of the rationale for the change. The Amendment includes non-substantive changes such as formatting and editorial changes that are not described in detail below but can be seen in the redline version of the Amendment. All section references below refer to the 2020 MOU and not this Staff Report.

Sections I-IV

- **Made non-substantive editorial changes and revisions to increase clarity and/or accuracy.** For example, the term watershed was made plural to more accurately reflect the multiple watersheds throughout Santa Monica Bay.
- **Made revisions to promote diversity, equity, inclusion and justice.** Staff identified passages in the 2020 MOU that can be edited to enhance inclusivity. The Commission's goal is to restore and enhance Santa Monica Bay and its watersheds for the benefit of all community members regardless of identity. Edits that promote equity and inclusion appear throughout the document. For example, staff recommend that all instances of "citizen" be replaced with "community member."

Sections I, II, III

- **Listed Tribes under membership entities as they were not listed previously.** The Commission's membership is consistent with guidance from the US EPA on typical NEP Management Conference membership, which may include: (1) elected and appointed policymaking officials from all governmental levels; (2) environmental managers from federal, state, regional, and local agencies; (3) local scientific and academic communities; (4) private community members; and (5) representatives from public and user interest groups—business, industry, community, and environmental. Staff recommend adding language stating Tribes are eligible for at-large membership. The Commission needs to do more work to establish relationships with local Tribes, and therefore, the Commission does not yet know how local Tribes wish to engage with the Commission. Accordingly, staff does not recommend that the Commission add designated seats for Tribes at this time. We encourage Tribes to reach out to staff to inquire about involvement with the Commission. The terms "Tribal" and "Tribe" have been added throughout the Amendment to refer to California Native American Tribes as defined in Water Code section 189.7: a community within a federally recognized California Native American Tribe or nonfederally recognized Native American Tribe on the contact list maintained by the Native American heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.

Sections II & III

- **Added outreach to Tribes as a Function of the Commission (function 4) to promote equitable outreach and engagement.** Outreach and engagement with Tribes has not historically been prioritized by the Commission, and Tribal inclusion is long overdue. Indigenous voices and perspectives are necessary to successfully restore and enhance Santa Monica Bay. Tribal outreach was added as a function of Commission staff (function 4) as well as the Host Entity and NEP Director for consistency (function 7). Tribal outreach and engagement is listed separately from the community outreach function described below to recognize and honor that Tribes are distinct, and in some cases, sovereign nations.
- **Updated Functions of the Commission (function 5, formerly function 4) with more inclusive language as well as a commitment to cultivate relationships with people from historically underserved communities to promote equitable outreach and engagement.** Engagement with underserved communities will ensure the CCMP is carried out in a just manner. This language was added as a function of Commission staff (function 5, formerly function 4) as well as the Host Entity and NEP Director (function 8) for consistency.

Section III

- **Added language stating that any Governing Board member may nominate entities to fill elected seats which will help ensure a broad and representative membership.** The 2020 MOU stipulated that only voting members may nominate for elected seats.
- **Clarified that in the Chair's absence, the Chair's alternates, Vice-Chairs, or Vice-Chair's alternates may act as the Chair to enhance the Commission's ability to conduct business.** The 2020 MOU states that Vice-chairs may act as Chair of the Governing Board in the Chair's absence and alternates assume all of the member's authorities, roles, and functions in the member's absence and. Therefore, alternates of the Chair and Vice-chair may also act as Chair if the Chair is absent. This clarification is important as it provides the Commission flexibility to conduct business in this scenario.

- **Added one Vice-chair to the Executive Committee in case the Chief Deputy Director of the State Water Board is elected Chair, which will improve the Commission's ability to carry out business.** Staff recommend adding language that will allow voting Governing Board members to elect one additional Vice-chair if the Chief Deputy Director of the State Water Board (who is an ex officio, voting member of the Executive Committee) is elected as Chair. This will ensure that there are seven (7) total voting members of the Executive Committee in that scenario. Having an even number of voting Executive Committee members would increase the likelihood of a tie during voting, which would negatively impact the Commission's ability to do business.
- **Considering adding language stating that elected members may not participate in a vote for elected seats.** . This will help ensure that incumbent elected members are not favored in the event of a contest and allows for consistency in voting procedures in the event that elections take place before elected members' terms have ended. However, excluding elected members from voting may limit the representation of the elected members' communities. Staff are soliciting input on this item from the Executive Committee, and staff will include a recommendation in the version sent to the Governing Board for consideration of approval.
- **Clarified that the Executive Committee can identify priorities and develop revisions to the CCMP, which will enhance the Commission's ability to conduct business.** The Executive Committee assists in the revision process by analyzing the CCMP in greater depth than the Governing Board, which expedites the CCMP revision process.
- **Added a function (function 1) allowing the TAC to develop and update the Santa Monica Bay NEP Comprehensive Monitoring Plan with Commission staff and the Host Entity for the Governing Board's consideration of approval.** This has been a role that the TAC has historically fulfilled, but it has never been outlined as a TAC function in the MOU.
- **Updated TAC function (function 2, formerly function 1) to more accurately reflect US EPA NEP guidance.** Staff recommend clarifying that State of the Bay Report updates should be completed every three to five years.

- **Renamed the Santa Monica Bay Stakeholders (Section III.D and throughout the Amendment) for enhanced inclusivity.** Staff recommend that this group of the Commission be renamed to “Santa Monica Bay Community Members.” The term stakeholder is not inclusive as it implies land ownership or a financial investment as a requirement to engage with the Commission. The Commission wants all Santa Monica Bay residents and visitors to feel welcome to participate in Commission meetings and events regardless of identity and socioeconomic status.
- **Clarified that the Administrative Director, Governing Board Chair, or a Vice-chair may moderate Community Member meetings enhancing the Commission’s ability to carry out Community Member meetings.** Staff also recommend clarifying that Community Member meetings are not subject to Bagley-Keene Open Meeting Act⁴ requirements so long as a quorum of members is not present at the meeting.
- **Added a function (function 11) allowing the Administrative Director to draft and sign letters of support for projects that are aligned with the CCMP.** This is a function that the Administrative Director has historically carried out, but it has never been formally outlined as a function in the MOU.

Attachment C

- **Added and removed Governing Board Seats to reflect redistricting and ensure membership is consistent with Santa Monica Bay NEP boundaries.** Membership of elected officials is restricted to officials whose district boundaries have substantial overlap with the Santa Monica Bay NEP’s boundaries. On December 15, 2021, Los Angeles County adopted updated boundaries for the Los Angeles County Board of Supervisors districts.⁵ On December 27, 2021, the State of California adopted updated boundaries for Congressional, State Senate, State Assembly, and State Board of Equalization districts.⁶ Los Angeles County and California redistricting is required every 10 years to reflect the results of the most recent census conducted by the federal government of the United States, which

⁴ [Bagley-Keene Open Meeting Act Guide 2023](#).

⁵ [Resolution of the County of Los Angeles Citizens Redistricting Commission Adopting a Redistricting Report for the Los Angeles County Supervisorial Districts Pursuant to Elections Code Section 21534, Subd. \(D\)\(3\)](#).

⁶ [California Citizens Redistricting Commission Certified Maps and Report](#).

occurred in 2020.⁷ The 2021 redistricting made several districts newly eligible for Commission membership while making several other districts ineligible due to changes in district boundaries. Staff have updated the MOU to reflect those changes. If adopted, this Amendment would result in an increase from 38 to 40 total Governing Board members as the number of non-voting members would increase from 10 to 12: four non-voting members were removed (State Senate and Assembly districts that are no longer within Santa Monica Bay NEP's boundary) and six non-voting members have been added in the Amendment. Staff do not propose to increase the number of voting Governing Board members.

- **Updated appointment procedures for members that are neither ex-officio nor elected to the Commission to enhance accuracy.** The names for some of these seats have also been updated for accuracy.

⁷ [2020 Census Results](#).